

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy
From: Scott Hallabrin, General Counsel
Subject: Prenotice Discussion of Amendments to Regulation 18361.2
Date: March 29, 2007

Proposed Commission Action: Approve for consideration of adoption in June amendments to Regulation 18361.2.

Reason for Proposal: Current Regulation 18361.2 sets forth the procedures by which the Commission determines whether to initiate civil litigation in an enforcement action. Essentially, the regulation requires the Executive Director to provide a memorandum for the Commission to consider in closed session. No members of the Commission staff are permitted to attend the closed session, except for the purpose of answering questions pertinent to the Commission's deliberations. The Commission is required to transcribe all closed session communications between the Commission and these staff members. According to subdivision (d) of the regulation, the reason for this is to minimize the Commissioners' exposure to information that may cause them to prejudge the case if it ultimately comes before them in an administrative action under Section 83116. If the Commission decides to initiate civil action, members of the Commission staff are then permitted to attend the closed session and advise the Commission on the civil action.

Staff believes the General Counsel's, Commission Assistant's and Executive Director's presence during the entire time of the Commission's closed session deliberations will assist the Commission in several ways. The General Counsel, or his or her designee if the General Counsel is unavailable, can advise the Commission on legal and procedural issues that may arise during its deliberations. The Commission Assistant can make and preserve the required record for the closed session. Finally, the Executive Director, acting within the confines of the memorandum he or she prepared for the closed session, can answer questions for the Commission. Finally, recording rather than transcribing discussions with members of the Commission staff will maintain an adequate record of these discussions and save time for the Commission Assistant.

Summary of Proposed Amendments: The proposed amendments essentially make four substantive changes to Regulation 18361.2: (1) require the General Counsel to be in attendance during the Commission's closed session deliberations on whether to initiate a civil enforcement action; (2) require the Commission Assistant to be in attendance at the same closed sessions; and (3) permit the Executive Director to be in attendance at the closed sessions; and (4) require Commission discussions with staff members as described above to be recorded rather than transcribed. All other proposed amendments to the regulation are technical or clarifying.

Recommendation: Approve for consideration of adoption in June amendments to Regulation 18361.2.